



Commonwealth of Kentucky

PURCHASE ORDER

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: MHMR DCBS SCL	
Doc ID No: PO2 736 0700007040 1	Procurement Folder: 483358
Procurement Type: MOA/PSC Exception	
Administered By: PAULA WOODWORTH	Cited Authority: KRS45A.690(1)(D)11
Telephone: 502-564-6852	Issued By: VICKIE CRAVENS

C O N T R A C T O R	CHS MHMR DIV OF MENTAL HEALTH
	100 FAIR OAKS LN 4W-C
	FRANKFORT KY 40621-0001
	US

Effective From: Effective To:

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	SCL Activities		0.00		0.00000	16,000.00	16,000.00

Extended Description

Contract term: 04/01/07 - 06/30/08
Contract Amt. \$80,000 FY 07 \$16,000 FY 08 \$64,000

DMHMRS is to establish guidelines for the monitoring of health and safety of children residing with certified Supports for Community Living (SCL) provider agencies and for joint and/or concurrent investigations to be conducted.

B I L T O	225641	S H I P T O	
	CFC PROTECTION & PERMANENCY DIV		
	275 E. MAIN ST. 3 EAST		
	FRANKFORT KY 40621		
	US		

Effective From: Effective To:

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	SCL Activities		0.00		0.00000	64,000.00	64,000.00

Extended Description

Contract term: 04/01/07 - 06/30/08
Contract Amt. \$80,000 FY 07 \$16,000 FY 08 \$64,000

Extended Description

DMHMRS is to establish guidelines for the monitoring of health and safety of children residing with certified Supports for Community Living (SCL) provider agencies and for joint and/or concurrent investigations to be conducted.

B I L T O	225641	S H I P T O	
	CFC PROTECTION & PERMANENCY DIV		
	275 E. MAIN ST. 3 EAST		
	FRANKFORT KY 40621 US		

Total Order Amount:	80,000.00
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Approvals:

This Contract is subject to the terms and conditions as stated. By affixing their signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of this agreement.

1st Party:

_____ Signature	_____ Title
_____ Printed name	_____ Date

2nd Party:

_____ Signature	_____ Title
_____ Printed name	_____ Date

Other Party:

_____ Signature	_____ Title
_____ Printed name	_____ Date

Approved as to form and legality:

Attorney

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Cabinet for Health and Family Services
Office of Contract Oversight
Department for Mental Health and Mental Retardation Services
Vickie Cravens, Contract Specialist
Division of Contract Development Services
275 East Main Street, 4 E-E
Frankfort, KY 40621
Telephone: 502 / 564-6746 ext. 3381
Fax: 502 / 564-2467
E-mail: Vickie.Cravens@ky.gov

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Section 1—Administrative Overview

1.00—Purpose and Background

The purpose of this contract is to establish guidelines for the monitoring of health and safety of children residing with certified Supports for Community Living (SCL) provider agencies and for joint and/or concurrent investigations to be conducted.

1.01—Issuing Office

The Commonwealth of Kentucky, Cabinet for Health and Family Services, Division of Contract Services, is issuing this Contract on behalf of the Department for Mental Health and Mental Retardation Services. The Division of Contract Services is the only office authorized to change, modify, amend, alter, or clarify the specifications, terms and conditions of this Contract.

1.02—Communications

The Contract Specialist named below is the point of contact for communications concerning contract issues.

Vickie Cravens
502 / 564-6746 ext. 3381
Fax – 502 / 564-2467
E-mail – Vickie.Cravens@ky.gov

1.03—Terminology

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For the purpose of this Contract, the following terms may be used interchangeably;

- a) Proposer, Offeror, Contractor, Provider, or Vendor
- b) Contract Specialist, Buyer, Purchases, or Contract Officer
- c) Proposal, or Offer
- d) Commonwealth of Kentucky, Commonwealth, or State
- e) Fiscal Year will be defined as the Commonwealth fiscal year: July 1 through June 30
- f) Biennium will be defined as the Commonwealth biennium: July 1 of each even numbered year through June 30 of the next even numbered year.

1.04—Organization

This contract is organized in the following manner:

Section 1—Administrative Overview / General information regarding the objectives of the Contract.

Section 2—Scope of Work / Description of tasks to be performed, contractor responsibilities, deliverables, performance criteria, technology standards, and system requirements.

Section 3—Terms and Conditions of the Contract / Terms and Conditions under which the Contractor shall perform this Contract.

Section 4—CHFS Standard Terms and Conditions For Memorandum of Agreements

Exhibits—Procurement Requirements

Forms—OPTIONAL—A Budget may be attached depending on the structure of the cost information.

Titles of paragraphs used herein are for the purpose of facilitating ease of reference only and shall not be construed to infer a contractual construction of language.

Section 2—Scope of Work

2.00—Scope of Work

Activities include monitoring of health and safety of children residing with certified Supports for Community Living (SCL) provider agencies as defined in 907 KAR 1:145, and for joint and/or concurrent investigations conducted by the parties for SCL provider agencies and Regional Community Mental Health/Mental Retardation Center (CMHC) Boards as defined in 908 KAR 2:060 and any CMHC subcontracted providers in accordance with their contract with the Department for Mental Health and Mental Retardation and provides for cooperation between DMHMRS and DCBS in client crisis situations.

100% of agreed upon monitoring visits, joint investigations, and reporting will be completed.

1. DCBS shall notify DMHMRS monthly of all children placed with SCL providers including provider name, address and telephone number, and names, addresses and Medicaid numbers of all children supported by the agency. DCBS will also notify DMHMRS any time a child is moved and the reason for the move.
2. DMHMRS will conduct at least annual monitoring visits, utilizing the standards set forth in the SCL regulation 907 KAR 1:145 that pertain to health and safety of residents, at each residence where a child

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resides, and will notify DCBS of the findings when complete. DCBS will be responsible for payment to DMHMRS for providing this monitoring function.

3. DCBS staff will continue to monitor all programmatic issues through on site visits to each provider site where children reside.
4. DMHMRS will immediately report any issues posing a threat to the health or safety of children residing in SCL residences to the Assistant Director of Protection and Permanency DCBS Central Office.
5. DCBS and DMHMRS shall each maintain a database of all calls /notification to the agency and respective agency action regarding alleged abuse, neglect or exploitation;
6. Upon receipt of an allegation of adult abuse, neglect, or exploitation, or child dependency, neglect, or abuse in a certified SCL provider agency and/or CMHC, DCBS shall notify DMHMRS via a DPP 115 faxed within 24 hours.
7. DCBS and DMHMRS shall attempt to conduct their respective investigations in the agency at the same time;
8. If DCBS and DMHMRS cannot conduct their investigations at the same time, the procedures shall be as follows:
 - (a) DCBS shall proceed with its investigation in accordance with KRS 209.030(1) and the time-frames established in 922 KAR 5:070; and
 - (b) DMHMRS shall proceed with its investigation in accordance with 907 KAR 1:145 for SCL provider agencies and 908 KAR 2:060 for CMHC and subcontracted service providers;
9. Prior to issuing written findings regarding the investigation, DCBS and DMHMRS shall confer to the extent possible;
10. Determinations regarding adult abuse (as defined in KRS 209.020(8)), neglect (as defined in KRS 209.020(16)), or exploitation (as defined in KRS 209.020(9)), or child dependency (as defined in KRS 600.020(16)), neglect (as defined in KRS 600.020(1)), or abuse (as defined in KRS 600.020(1)) in a certified SCL provider agency and a CMHC shall be made by DCBS;
11. DCBS shall notify DMHMRS when an investigation is completed and provide DMHMRS with a copy of the Notification of Investigative Findings (APS); or a DPP 155 (CPS) within thirty (30) days of the completion of the investigation. A copy of the complete investigation, or Continuous Quality Assessment, and any other related materials, will be provided only upon written request;
12. Determinations regarding compliance with Medicaid certification requirements shall be made solely by DMHMRS;
13. DMHMRS shall notify DCBS when an investigation is completed and supply DCBS with a copy of the investigative findings within thirty (30) days of the completion of the investigation. A copy of the complete investigation and any other related materials will be provided only upon written request;
14. DCBS and DMHMRS shall each notify OIG and the Attorney General of Investigations in SCL provider

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agencies related to fraud, abuse, and unacceptable practices related to Medicaid funding as set forth in KRS 205.8461, 907 KAR 1:155 and 907 KAR 1:671 in CMHC agencies related to fraud, abuse and unacceptable practices related to State General Funds as set forth in the contract between DMHMRS and the CMHC's;

15. DCBS and DMHMRS shall share information regarding investigations of adult abuse, neglect, or exploitation, and child dependency, neglect, or abuse in certified SCL provider agencies and CMHC and subcontracted provider agencies upon request and as provided in KRS 61.878(5). However, each agency shall protect the confidentiality of the information being shared, in accordance with KRS 209.140, KRS 620.050(4), and other applicable state and federal laws, including the Health Insurance Portability and Accountability Act;
16. Each agency shall provide the other with a list of regional contacts for the purpose of notifications, concurrent investigations and crisis management;
17. Each agency shall establish a schedule for representatives from DMHMRS and DCBS to meet, with oversight from the agencies, at least quarterly, to evaluate and improve this investigative and monitoring process;
18. Each agency shall designate a representative who will be responsible for updating the interagency curriculum, and providing for annual joint training of staff from each agency, and the certified SCL and CMHC provider staff, including training on the immediate mandatory reporting requirements under KRS 209.030(2) and KRS 620.030(1), and training to SCL and CMHC provider agencies/staff on the requirement of notification of alleged adult abuse, neglect, or exploitation, or child dependency, neglect, or abuse, to guardians under 907 KAR 1:145, Section 6;
19. In emergency closures of SCL provider agencies, DMHMRS and DCBS shall follow the procedures as outlined in the Emergency Crisis Plan incorporated by reference in this MOU; and
20. DMHMRS shall monitor the statutory and contractual requirements of the Regional Community Mental Health/Mental Retardation Center (CMHC) Boards regarding crisis assistance to affected individuals as defined in the crisis prevention plan for persons with mental retardation or developmental disabilities in accordance with the CMHC contract. The plan shall address actions to prevent a crisis, including interventions regarding placement alternatives within the second party's geographic region.

2.01—Reporting Requirements

DCBS shall notify DMHMRS monthly of all children placed with SCL providers including provider name, address and telephone number, and names, addresses and Medicaid numbers of all children supported by the agency. DCBS will also notify DMHMRS any time a child is moved and the reason for the move.

2.02—Definitions/Terms

DCBS is mandated by KRS 209.030(5) to investigate all complaints of adult abuse (as defined in KRS 209.020(8)), neglect (as defined in KRS 209.020(16)), or exploitation (as defined in KRS 209.020(9)), and 922 KAR 5:070 provides guidelines for conducting these investigations.

DCBS is mandated to investigate complaints concerning the population of children reaching the legal age of adulthood by KRS 620.040 concerning child dependency (as defined in KRS 600.020(16)), neglect (as defined

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in KRS 600.020(1)), or abuse (as defined in KRS 600.020(1)), and 922 KAR 1:330 provides guidelines for conducting such investigations;

DMHMRS is the state survey and certification agency responsible for assuring that certified SCL provider agencies as defined in 907 KAR 1:145 are in compliance with Medicaid certification requirements and is the state agency responsible for monitoring and evaluating the CMHCs' performance of its responsibilities pursuant to their contracts with DMHMRS;

2.03—Payment, Invoicing and Reporting Details

DMHMRS will conduct at least annual monitoring visits, utilizing the standards set forth in the SCL regulation 907 KAR 1:145 that pertain to health and safety of residents, at each residence where a child resides, and will notify DCBS of the findings when complete. DCBS will be responsible for payment to DMHMRS for providing this monitoring function.

The fees and expenses relative to the performance of the services outlined in this agreement shall not exceed the amount as approved in the agreement.

Payment will be made within thirty (30) working days of receipt of invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454. Invoices for payment shall be submitted to the Office of Contract Oversight.

Travel expenses will be submitted in accordance with Cabinet policy. The Second Party's fees and expenses relative to the performance of the services described herein shall not exceed a total of \$80,000.

2.04—Monitoring Requirements

Each agency shall establish a schedule for representatives from DMHMRS and DCBS to meet, with oversight from the agencies, at least quarterly, to evaluate and improve this investigative and monitoring process;

Each agency shall designate a representative who will be responsible for updating the interagency curriculum, and providing for annual joint training of staff from each agency, and the certified SCL and CMHC provider staff, including training on the immediate mandatory reporting requirements under KRS 209.030(2) and KRS 620.030(1), and training to SCL and CMHC provider agencies/staff on the requirement of notification of alleged adult abuse, neglect, or exploitation, or child dependency, neglect, or abuse, to guardians under 907 KAR 1:145, Section 6;

2.05—Performance and Evaluation

Each agency shall establish a schedule for representatives from DMHMRS and DCBS to meet, with oversight from the agencies, at least quarterly, to evaluate and improve this investigative and monitoring process;

Each agency shall designate a representative who will be responsible for updating the interagency curriculum, and providing for annual joint training of staff from each agency, and the certified SCL and CMHC provider staff, including training on the immediate mandatory reporting requirements under KRS 209.030(2) and KRS 620.030(1), and training to SCL and CMHC provider agencies/staff on the requirement of notification of alleged adult abuse, neglect, or exploitation, or child dependency, neglect, or abuse, to guardians under 907 KAR 1:145, Section 6;

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DMHMRS shall monitor the statutory and contractual requirements of the Regional Community Mental Health/Mental Retardation Center (CMHC) Boards regarding crisis assistance to affected individuals as defined in the crisis prevention plan for persons with mental retardation or developmental disabilities in accordance with the CMHC contract. The plan shall address actions to prevent a crisis, including interventions regarding placement alternatives within the second party's geographic region.

Section 3—Terms and Conditions of the Contract

3.00—Beginning of Work

The Contractor shall not commence any billable work until a valid Contract has been fully executed. The Contract shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

3.01—Contract Components and Order of Precedence

The Commonwealth's acceptance of the Contractor's offer indicated by the issuance of a Contract Award by the Division of Contract Services shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. The Finance and Administration Cabinet Manual of Policies and Procedures contained in 200 KAR 5:021 and the Office of Material and Procurement Services' General Conditions And Instructions For Solicitations And Contracts contained in FAP110-10-00;
3. Any clarifications concerning the Contractor's proposal.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

3.02—Term of Contract and Renewal Options

The initial Term of the Contract shall be for a period of one year from the effective date of the Award of Contract.

The Terms and Conditions of this Contract may be extended or amended according to the provisions of KRS Chapter 45A. This Contract may be renewed at the completion of the initial Contract period for additional periods upon the mutual agreement of the Parties and approval of the Secretary of the Finance and Administration Cabinet and/or the Legislative Research Commission's Government Contract Review Committee. Such mutual agreement shall take the form of a modification to the Contract under Section 3.03—Changes and Modifications to the Contract.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Contract Specialist to be in the best interest of the Commonwealth.

3.03—Changes and Modifications to the Contract

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by

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the Contractor and the Commonwealth, and incorporated as a written amendment to the Division of Contract Services of the Cabinet for Health and Family Services prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of Understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Contract Specialist for consideration and decision.

3.04—Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in Section 3.03—Changes and Modifications to the Contract.

3.05—Cancellation

The Cabinet shall have the right to terminate and cancel this agreement at any time upon thirty (30) days written notice served on the contractor by registered or certified mail outlining the reasons for the cancellation. The Second Party has the same such right to terminate said agreement, upon thirty (30) days written notice served on the Cabinet by registered mail or certified mail outlining the reasons for the cancellation.

3.06—Contract Conformance

If the Contract Specialist determines that deliverables due under the Contract resulting from this Solicitation are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Contract Specialist may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

3.07—Notices

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Contract shall be in writing.

After the Award of Contract, all Programmatic communications are to be made to the Agency Contact Person listed below with a copy to the Contract Specialist, as identified in Section 1.02.

The Cabinet for Health and Family Services

Paula Woodworth
Division of Protection and Permanency
Cabinet for Health and Family Services
275 East Main Street, 3E-A
Frankfort, Kentucky 40621-0001
Telephone number: 502-564-6852 ext. 4381

With copy to:

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Contract Specialist
Vickie Cravens
Office of Contract Oversight
Cabinet for Health and Family Services
275 East Main Street, 4E-E
Frankfort, Kentucky 40621-0001
Telephone number: 502-564-6746 ext. 3381

After the Award of Contract, all communications of a contractual or legal nature are to be made to the Contract Specialist.

3.08—Payment

The fees and expenses relative to the performance of the services outlined in the Contract shall not exceed the amount as approved in the Contract. The services are to be performed during the term of the Contract as specified in Section 3.02. The Contract is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and filed with the Legislative Research Commission's Government Contract Review Committee.

The Commonwealth will make payment within thirty (30) working days of receipt of the Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454. Invoices for payment shall be submitted to the Agency Contact Person or his/her representative.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Payments on Contracts shall not be authorized for services rendered if the Legislative Research Commission's Government Contract Review Committee has disapproved the contract, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet.

3.09—Expenses

The contractor shall only be reimbursed for those expenses that were expressly detailed in the Contract.

Invoicing for fee: The contractor's fee shall be documented on an original invoice(s) detailing the work performed and the time frame in which it was performed.

Invoicing for travel expenses: (If travel expenses are allowed under the contract), either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and other miscellaneous expenses.

Invoicing for miscellaneous expenses: Allowable expenses shall be documented on an original invoice or certified copy.

3.10—Social Security

The Second Party and all other parties so contracted for services under the scope of service of this Contract agree that they are cognizant that CHFS is not liable for Social Security contributions pursuant to 42 U.S Code, Section 418, relative to the compensation of the Second Party during the effective dates of this Contract.

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3.11—Advertising Award

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

Section 4—CHFS Standard Terms and Conditions for Memorandum of Agreements

4.00—The Contract

CHFS and the Second Party agree to the terms and conditions as set forth in this Contract and as set forth in all Attachments incorporated herein by reference. This Contract and the Attachments incorporated herein by reference comprise a full and complete expression of the rights and obligations of the Parties as to the subject matter hereof and they shall supersede any and all other agreements, written or oral, heretofore made by the Parties.

4.01—Attachment(s)

The Attachment(s) as referenced in this Contract is/are incorporated into this Contract and is/are binding on all Parties. If an Attachment(s) is/are in conflict with this Contract and its contract clause(s), this Contract and its contract clauses shall prevail.

4.02—Effective Date of Contract and Earliest Date of Payment

The Second Party agrees to perform the services and functions specified during the term of this Contract. It is understood that this Contract is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and the Government Contract Review Committee in accordance with KRS Chapter 45A.690-725. CHFS shall provide timely notice to the Second Party of disapproval of this Contract or any amendment thereto under KRS Chapter 45A.690-725.

4.03—Extension Periods and Amendments to Contract

The terms and conditions of this Contract may be extended or amended according to the provisions of KRS Chapter 45A.690-725, and are subject to the approval of the Secretary of the Finance and Administration Cabinet and the Government Contract Review Committee. The Second Party may request an amendment by submitting a written request to the Cabinet for Health and Family Services, Office of Contract Oversight, 275 East Main Street 4E-E, Frankfort, KY 40621. Amendments are not in effect until written approval is received from CHFS. The Second Party shall not request an amendment within the last sixty (60) days of the Contract period.

4.04—Funding

This Contract is expressly conditioned on the availability of state and federal appropriated funds. CHFS shall fund the delivery of services and supports, and activities under the terms and conditions of this Contract to the extent that the funding allocations specified are made available to CHFS. The Second Party shall have no right of action against CHFS in the event that CHFS is unable to perform its obligations under this Contract as a result of the suspension, termination, withdrawal, or failure of funding to CHFS or lack of sufficient funding to CHFS for any activities or functions contained within the scope of this Contract.

Other provisions of this Contract notwithstanding, the Second Party agrees that if funds are not appropriated or are not otherwise made available to CHFS for the purpose of making payments hereunder, then CHFS shall be authorized to make payment to the extent possible and/or terminate this Contract in accordance with the Termination clause without obligation for the payment of any cancellation or termination charges and without any other obligation or liability hereunder.

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4.05—Assignment

This Contract shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this Contract nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of CHFS, Office of Contract Oversight.

4.06—Bankruptcy

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee:

- a) promptly cures all defaults under this Contract;
- b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and
- c) provides adequate assurance of future performance, as determined by the Commonwealth.

4.07—Notice

Unless otherwise provided, all notices, consents, and other communications required and/or permitted by this Contract shall be in writing as specified in Section 3.07 and shall be deemed given to a Party when:

Delivered to the appropriate address by hand, United States Postal Service, or by a nationally recognized overnight courier service (costs prepaid);

Sent by facsimile with confirmation of transmission by the transmitting equipment; or

Received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses and facsimile numbers and marked to the attention of the person by title designated below (or to such other address, facsimile number, or person) as a Party may designate by notice to the other Party:

If personally delivered, such notice shall be effective upon delivery and if mailed as provided for above, such notice shall be deemed effective three (3) calendar days after it is placed in the mail.

4.08—Headings

The section headings in this Contract are for reference and convenience only and shall not have any effect on the construction or legal effect of this Contract.

4.09—Severability

It is understood and agreed by the Parties that if any part, term, or provision of this Contract is held by the courts to be illegal or in conflict with any law of the Commonwealth of Kentucky or of the United States of America, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid, if the remainder of the Contract is capable of performance.

4.10—Indemnification

The Second Party shall indemnify and hold harmless CHFS and its agents, representatives, officers, directors, employees, insurers, successors, and assigns from and against any and all expenses, costs (including attorneys' fees), causes of action, liability, loss and/or damages suffered or incurred by it or any of them, that results from or arises of (a) this Contract; (b) any and all acts of the Second Party and or its Subcontractor(s); (c) the policies and procedures of the Second Party, specifically including all Second Party employment

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practices employed by Second Party during the term of this or any prior Agreement with CHFS; (d) any dishonest, fraudulent, criminal, or negligent or unauthorized acts or errors or omissions which are committed by Second Party or any of Second Party's employees or agents or Subcontractors; (e) the publication translation, reproduction, delivery, performance, use or disposition of any data produced by CHFS in an unauthorized manner, provided that such action was not taken by Second Party or as a result of the express written request of CHFS; or (f) Second Party's failure to comply with any applicable state or federal laws or regulations.

Provided, however, in the event the Second Party is a state agency or subcontracts for services with a state agency subject to the jurisdiction of the Board of Claims pursuant to KRS 44.070 through KRS 44.160, the state agency's tort liability shall be limited to an award from the Board of Claims up to the jurisdictional amount.

4.11—Sovereign Immunity

The Parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by CHFS or the Commonwealth of Kentucky of any immunities from suit or from liability that CHFS or the Commonwealth of Kentucky may have by operation of law.

4.12—Force Majeure

Neither Party shall be liable for public utility performance (e.g., Postal service, telephone or water company) or for the consequence of public utility non-performance. Events or conditions beyond the reasonable control of the Parties, such as natural disasters, fires, floods, elements, transportation crashes, or utility failures shall not be construed as non-performance, nor shall reductions be applied as a result of such events, provided that CHFS shall have the right to obtain the necessary services elsewhere in the event of such non-performance by the Second Party and the Parties shall negotiate in good faith any appropriate offset to the compensation payable under this Contract. The Second Party shall cooperate and shall require that any Subcontractor cooperate with CHFS in such event. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of a force majeure event or otherwise waive this right as a defense.

4.13—Obligation of Good Faith

Each party shall be obligated to act in good faith in the performance and enforcement of its obligations herein, and shall deal fairly, honestly and reasonably with the other party, having due regard for all relevant facts and circumstances.

4.14—Code of Ethics

The Second Party and all professional personnel who may provide services under this contract or any subcontract with the Second Party shall be familiar with and abide by any and all code of ethics or conduct as designated by CHFS that has been established by a national or regional association and is generally recognized as being applicable. Failure of the Second Party to abide by the applicable code of ethics shall result in the immediate termination of the contract.

4.15—Influence on Purchasing and Other Business Transactions

The Second Party shall not attempt, in any manner, to influence any business transactions to be unlawful in any way or respect, nor attempt in any way to influence specifications for or purchasing of services, commodities, or equipment by the Commonwealth of Kentucky.

4.16—Notices and Pamphlets

All notices, employment, advertisements, information pamphlets, research reports, and similar public notices prepared and released by the Second Party, pursuant to this Contract, shall include a statement identifying the

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appropriate source of funds, for the project or service, including but not limited to, identifying whether the funding is in whole or in part from federal, CHFS, or other state funds.

4.17—Service Delivery Requirements

All services provided by the Second Party under the terms and conditions of this Contract shall be delivered in accordance with:

- a) All applicable federal and state statutes and regulations as they are currently in effect;
- b) All commitments and assurances as set forth in all CHFS grant awards with respect to goals, strategies, funding, and outcomes made by the Commonwealth as required by and contained in grant applications to federal agencies, foundations, and other agencies providing grant funding and in the resulting award notices from those agencies; and
- c) All final federally-funded grant award terms and conditions, including federal reporting and expenditure requirements, for any federally-funded proposed project developed jointly by the Second Party and CHFS and submitted to a federal agency.

4.18—Roles and Responsibilities for Proposed and Existing Staff

The roles and responsibilities and the written qualifying criteria for all personnel to be employed under the scope of work for all projects funded under this Contract, including any proposed employees under subcontract to the Second Party, shall be in compliance with state and federal laws governing the distribution of funds and the performance of activities as set forth in the project(s) in this Contract. The Second Party shall maintain and make available, upon written request, documentation of all personnel policies and procedures that govern the recruitment, hiring and performance evaluation for all personnel funded under this Contract. All employees hired by the Second Party or its subcontractors and funded under the terms and conditions of this Contract, shall have position descriptions which set out the required qualifications, skills and knowledge required to complete the scope of work as set out under this Contract.

4.19—Terms and Conditions of Contract Payments

The Second Party shall not begin work on this contract until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been filed with the Government Contract Review Committee, except as otherwise exempt. [KRS 45A.695 (1)]

CHFS shall make payment to the Second Party only after the Secretary of the Finance and Administration Cabinet or his designee and the Government Contract Review Committee approve the contract except as otherwise exempt. Once approved, CHFS shall make payment to the Second Party within thirty (30) business days of receipt of accurate, acceptable and timely invoices, as specified in the Contract, submitted by the Second Party under the terms and conditions of the Contract. Payment is contingent upon Second Party's continued satisfactory performance throughout the duration of contract, as determined by CHFS. The invoice shall contain at a minimum the following information:

- a) Description of the service performed;
- b) Itemized statement of costs for a cost reimbursement contract;
- c) Dates and hours, if applicable, of the services provided; and
- d) Other information as required in this Contract.

Payment on contracts shall not be authorized for services rendered after the Government Contract Review Committee's disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary of the Finance and Administration Cabinet. [Statement required by KRS 45A.695(7)]

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CHFS shall reimburse the Second Party for services rendered only. If, for any reason, the Second Party is unable to render services, CHFS shall not be liable for payment to the Second Party for the time period in which the Second Party does not provide the services for which CHFS contracted.

CHFS shall reimburse the Second Party for benefits accrued during the contract period only in accordance with the approved budget and shall not be liable for benefits accrued prior to the beginning of or after the end of the contract period. All invoices for benefits, including sick, compensation, and annual leave time must be submitted prior to the contract expiration date to be considered appropriate, acceptable, and timely.

Payment is subject to the availability and allocation of local agency or governmental funds, or state or federal funds necessary to finance the performance of the services described in this Contract. CHFS retains the right to withhold payment if the Second Party does not comply with CHFS programmatic and fiscal reporting and monitoring requirements.

4.20—Total Amount of Funds and Budget Revisions

The Second Party shall not be reimbursed for any expenses other than those expressly prescribed in this Contract and other Attachments incorporated herein by reference. CHFS shall have the right to recoup the amount of any overpayment, regardless of the reason for the overpayment. Any reconciliation or settlement of fund balances contained in the Summary Line Item Section of this Contract shall be negotiated between CHFS and the Second Party and determined as soon as feasible before the end of the scope of work as set forth under the Contract.

The Second Party shall not request a budget revision within the last sixty (60) days of the contract period.

4.21—Travel and Travel Hourly Rate

The Second Party shall not be paid for travel expense unless and except as specifically authorized under the specifications of this Contract. Unless otherwise indicated, travel reimbursement for activities under the terms and conditions of this Contract shall be in accordance with 200 KAR 2:006. No travel time or travel expenses shall be included in the hourly rates of the Second Party's employees, or any subcontractor's employees to the Second Party, under this Contract.

4.22—Responsibility for Subcontractor Contract Requirements

The Second Party shall have a Contract with any subcontractor that the Second Party contracts with to meet the statement of work, method of payment, and deliverables of this Contract that specifies the responsibilities of the parties and the cost. In addition, the Second Party's Contract with the subcontractor shall specify that all requirements of this Contract are applicable and binding on the subcontractor. Any plan to subcontract any of the provisions of this Contract must be set forth in the Second Party's proposal for the delivery of products or services and included in the body of the contract in the subcontractor's section. The subcontractor must make available to the Second Party and to CHFS, if requested, copies of personnel records and documentation of employees' compliance with the terms and conditions of this Contract.

No obligation or right of Second Party under this Contract shall be subcontracted to another, without prior written approval, of CHFS after CHFS has had the opportunity to review all contract documents setting forth the terms and conditions for the subcontract. Second Party, upon the cabinet's request, shall submit the subcontract for approval to: Cabinet for Health and Family Services, Office of Contract Oversight, Division of Contract Development Services, 275 East Main Street, 4E-E, Frankfort, KY 40621.

4.23—Subcontractor Monitoring Requirements

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The Second Party shall monitor subcontractors for programmatic and fiscal compliance with the terms and conditions of this Contract and those specific provisions set out under the Second Party's contract with the subcontractor. The Second Party agrees to utilize restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws regulations, and terms and conditions of the federal grant award in contracting with subcontractors.

Second Party further understands and agrees, and shall ensure that any Subcontractor understands and agrees, that CHFS and any of its duly authorized agents or representatives shall have access to any books, documents, papers, records, or any other materials which are pertinent to this contract or Subcontract, for the purposes of making monitoring, auditing, examination, excerpts, and transcriptions.

4.24—Cost Principles, Requirements and Limitations

The Second Party shall conform to the cost principles as set forth in 200 KAR 5:317; 45 C.F.R Parts 74, 92, 96; 48 C.F.R.31 and Contract Cost Principles and Procedures, Office of Management and Budget Circular A-122, Cost Principles for Non-Profit Organizations (as revised) and OMB Circular A-110, Uniform Administrative Requirements for Grants and Contracts with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations unless excluded by Federal laws or regulations, as applicable.

4.25—Requirements and Limitations on Indirect or Administrative Cost Requirements

Pursuant to OMB A-122, the Second Party shall maintain a written indirect cost allocation plan of direct and/or indirect costs if, in instances where the Second Party operates more than one (1) project, service, program, or activity.

The cost allocation plan shall be consistently and uniformly applied except where it is determined in writing by the CHFS Secretary or his or her designee to be in the best interest of CHFS to do otherwise.

In the event the Second Party has an indirect cost allocation rate and/or plan in operation that has been accepted and approved by the Second Party's cognizant federal agency, CHFS shall recognize the cost allocation plan for purposes of recording and reporting reimbursable costs to the extent that such costs are allowable and within the administrative and/or indirect cost limitation as set forth in the approved budget for each funding source of this Contract. Two (2) copies of the approved indirect cost allocation rate and/or plan shall be furnished to the agency contact identified in Section 3.07.

4.26—Financial Record Retention

The Second Party agrees to maintain all records pertaining to this contract for a period of not less than three (3) years after all matters pertaining to this contract (e.g., audit, settlement of audit exceptions, disputes) are resolved in accordance with applicable federal and/or state laws, regulations, and policies (except as may otherwise be specified in this contract).

4.27—Access to Records, Books, and Documents

The Second Party agrees that CHFS and/or the federal grantor agency, the Comptroller General of the United States and/or the Kentucky Auditor of Public Accounts, and/or any of their duly authorized representatives or agents including independent auditors, shall have access to any books, documents, papers, and records of the Second Party which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

The Second Party agrees to permit staff of CHFS, persons acting for CHFS, and/or staff designated by appropriate federal agencies, to monitor and evaluate services, supports or activities being performed under

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the provisions of this Contract. The Second Party also agrees to submit all records and documentation of such in a format prescribed by CHFS in regard to contracted and subcontracted services when requested for monitoring purposes. The Second Party shall receive no additional remuneration for participation in the monitoring process. The Second Party agrees that CHFS, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, that are directly pertinent to this contract for the purpose of financial audit, contract monitoring or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission that are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency was providing this service.

4.28—Audit Requirements

In the event that the contract is funded in whole or in part by a federal agency, and the Second Party is a non-federal entity, the Second Party shall have a single audit conducted in accordance with Government Auditing Standards (GAS), Generally Accepted Auditing Standards (GAAS), and OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations issued by the Comptroller General of the United States and the Office of Management and Budget as amended. See current requirements at <http://www.whitehouse.gov/omb/circulars/index.html>.

The audit report's accompanying financial statements shall be issued in accordance with Generally Accepted Accounting Principles (GAAP) and reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited.

The audit shall cover each fiscal year period, and a copy of the Second Party's audit report(s), federal schedule of expenditures, supplemental information by cost center and/or program and audit findings with corrective action plan shall be submitted to the agency contact identified in Section 3.07, no later than six (6) months after the fiscal year end.

Should the audit report refer to a separate management letter of findings, the Second Party shall include a copy of the management letter with the audit report and comments and/or a corrective action plan. All material findings shall be reported in the audit section of audit findings and shall include the management's response and/or corrective action as required by OMB Circular A-133.

The audit report shall include a schedule of expenditures of federal awards as stipulated by OMB Circular A-133 requirements and contain the following:

- a) The Catalog of Federal Domestic Assistance (CFDA) number;
- b) CFDA title/description; and
- c) Pass-through entity's name and contract number.

The audit report shall include supplemental information of all federal grant and/or award expenditures by cost centers and/or programs identifying all administrative and indirect cost for each state fiscal year. The Second Party shall include in the supplemental information a list of their subrecipients of federal monies received through this Contract and provide the following:

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- a) Subrecipients name;
- b) CFDA number, title/description;
- c) Subrecipient's contract number; and
- d) Subrecipient's expenditures.

A copy of the engagement letter shall be submitted to the agency contact identified in Section 3.07 three (3) months prior to the Second Party's fiscal year end. If the Auditor of Public Accounts (APA) is to perform the audit, the name of the APA auditor and the anticipated start date shall be submitted to the agency contact identified in Section 3.07, no later than three (3) months prior to fiscal year end unless that office or its designee grants an extension in writing.

4.29—Response/Compliance with Audit Findings

The Second Party shall take action to ensure its or a subcontractor's compliance with or correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the services and deliverables or any other deficiency contained in any audit, review, or inspection conducted under this section. This action will include Second Party's delivery to CHFS, for CHFS's approval, a Corrective Action Plan that addresses deficiencies identified in any audit(s), review(s), or inspection(s) within thirty (30) calendar days of the close of the audit(s), review(s), or inspection(s).

The Second Party shall bear the expense of compliance with any finding of noncompliance under this Section that is:

- a) Required by a Kentucky or Federal law, regulation, rule or other audit requirement relating to Second Party's business;
- b) Performed by Second Party as part of this Contract; or
- c) Necessary due to Second Party's noncompliance with any law, regulation, rule, or audit requirement imposed on Second Party.

4.30—Maintenance of Insurance

During the term of this Contract, the Second Party shall maintain and shall require any Subcontractor to maintain their directors and officers liability insurance, workers' compensation insurance, employer liability insurance, and such other liability insurance as reasonably necessary in the Second Party's business judgment to provide adequate coverage against losses and liabilities attributable to the respective acts or omissions of the Second Party and the Subcontractor(s) in the performance of this Contract. The Second Party shall provide or cause to be provided and shall require any Subcontractor to provide or cause to be provided evidence of such coverage upon request.

To the extent that the Second Party and any Subcontractor is not self-insured, each shall, in any event, name CHFS as an additional insured on any policy of coverage, with the exception of the workers compensation and any reinsurance. The Second Party and any Subcontractor shall notify CHFS of the evidence of insurance coverage within five (5) business days of coverage. Notice shall be sent in writing to the Cabinet for Health and Family Services, Office of Contract Oversight, Division of Contract Development Services, 275 E. Main Street 4E-E, Frankfort, Kentucky 40621.

CHFS shall not be responsible for any premiums or assessments on the policy or policies held by the Second Party or any Subcontractor under this Contract. CHFS may, at its sole option, pay one or more premiums, if it decides that to do so would be in the best interest of the Cabinet. Should CHFS exercise this option, it shall be fully reimbursed by the Second Party, either by Second Party directly or by an offset against future payments.

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The Certificate of Insurance for any policy other than self-insurance or any reinsurance must require that the insurer shall not cancel the coverage without thirty (30) days prior written notice to CHFS.

Second Party shall notify CHFS within five (5) business days of any cancellation or interruption of Second Party or Subcontractor's insurance coverage. CHFS shall require in any subcontracts that the Subcontractor provide such notice within five (5) business days the Second Party and CHFS. Second Party shall assure and require that any Subcontractor assure that insurance is in effect at all times during the life of this Contract. If their respective insurance coverage expires at any time during the term of this Contract, the Second Party and any Subcontractor shall provide at least thirty (30) calendar days prior to the expiration date, to the extent possible, a new Certificate of Insurance evidencing coverage as provided herein for not less than the remainder of the term of this Contract.

4.31—Research Project Approval and Institutional Review Board Requirements

Any proposed research project undertaken under the terms and conditions of this Contract shall follow the procedures and protocols established under 900 KAR 1:060 which provide for a Cabinet review of research projects supported or funded in whole or in part through CHFS. If the proposed research project involves human subjects, it shall comply with federal regulations 45 CFR 46.101 through 46.409 and the requirements of the Cabinet's Institutional Review Board for the Protection of Human Subjects which CHFS is required to establish and maintain to protect the rights and welfare of human subjects of research conducted or sponsored by CHFS. The project manager assigned by CHFS will provide all documentation and protocols for review and approval by the Cabinet for Health and Family Services Institutional Board. No research may begin until such time as the Board reviews and approves.

4.32—Scientific Misconduct

The Second Party shall set out a procedure for the inquiry, investigation, appeal, and disposition of complaints alleging misconduct in activities involving any and all research projects funded, in whole or in part, with federal funds included in this Contract, and as authorized under the Public Health Services research grants. Such policies and procedures shall be in accordance with the provisions of 42 CFR 50.101 to 50.104 and 900 KAR 1:080 as amended, and shall be made available, upon request, to the Cabinet for Health and Family Services. The Second Party shall immediately report to CHFS any activity reported to the Second Party under these terms and conditions. Notice shall be sent in writing to the Cabinet for Health and Family Services, Office of Contract Oversight, Division of Contract Development Services, 275 E. Main Street 4E-E, Frankfort, Kentucky 40621.

4.33—Turnover Assistance

Upon receipt of notice of termination of the Contract from CHFS, the Second Party shall provide any turnover assistance reasonably necessary to enable CHFS or its designee to effectively close out the Contract and move the work to another vendor or to perform the work by itself.

4.34—Remedies for Breach

It is agreed by the Parties that in the event of breach of contract by the Second Party, CHFS may pursue any remedy available to it pursuant to this Contract, or to the provisions of KRS Chapter 45A, or any remedy that is available to it by law. The remedies available to CHFS may be invoked without regard to the existence of any other available remedy, and may include the enforcement of any holdback provision or payment of any specified liquidated damages by the Second Party to CHFS for noncompliance as provided for in this Contract.

4.35—Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier

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Covered Transactions

The Second Party certifies the following by signing this Contract:

- a) That neither it nor its principals and/or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- b) Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall submit an explanation in writing to CHFS; and
- c) That should Second Party or its principals, and/or its subcontractors become debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, it shall immediately by telephone and within five (5) business days in writing notify CHFS of same.

4.36—Licensure, Certification, and Registration

The Second Party shall:

- a) Ensure that each employee under contract or in its employ obtains and maintains all appropriate licenses, registrations, and/or certifications (at all times) necessary to the extent such are required for performance under this Contract;
- b) Ensure that it has readily accessible copies of licenses, registration and/or certifications necessary for each employee under contract or in its employ; and
- c) Produce copies of any employee's license, registration and/or certification at the request of CHFS or the Cabinet's designee.

4.37—Permits, Licenses, Taxes and Commonwealth Registration

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

4.38—Conflict of Interest Laws and Principles

The Second Party certifies that the Second Party is legally entitled to enter into this Contract with the Commonwealth of Kentucky, and by holding and performing this Contract will not be violating either any conflict of interest statute, KRS 45A.330-45A.340, 45A.990, KRS 164.390, or KRS 11A.040 of the Executive Branch Code of Ethics, relating to the employment of former public servants.

4.39—Campaign Finance (See Exhibit B)

The Second Party certifies that neither he/she nor any member of his/her immediate family having an interest of ten percent (10%) or more in any business entity involved in the performance of this Contract, has contributed more than the amount specified in KRS 121.056 (2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this Contract. The Second Party further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and

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that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

4.40—Legal Proceedings

Except as specifically disclosed in writing to CHFS by the Second Party, prior to the date of this Contract, Second Party certifies there are no suits, investigations, or other proceedings pending or threatened against Second Party or any subcontractor which would have a material effect on Second Party's ability to perform under this Contract, or on Subcontractors ability to perform under their respective subcontracts, if applicable. Further, the Second Party shall use its best efforts to notify CHFS within one (1) business day, and in writing within three (3) business days, of all suits, investigations, or other proceedings involving Second Party related to this Contract. The Second Party shall send written notice to the Cabinet for Health and Family Services, Office of Contract Oversight, Division of Contract Development Services, 275 East Main Street 4E-E, Frankfort, KY 40621

4.41—Certification of Lobbying Activities

Second Party shall disclose any lobbying activities in accordance with Section 1352, Title 31, U. S. Code. The Second Party certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4.42—Discrimination Prohibited (Because of Race, Religion, Color, National Origin, Sex, Age, or Disability)

During the performance of this contract, the Second Party shall:

Not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The Second Party further agrees to comply with the provisions of the Americans with Disabilities ACT (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Second Party agrees to provide needed reasonable accommodations upon request. The Second Party shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Second Party agrees to post in conspicuous places, available to

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employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. In all solicitations or advertisements for employees placed by or on behalf of the Second Party, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

Send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Second Party's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Second Party will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Comply with all provisions of Executive Order No. 11246 of September 24, 1965, Equal Employment Opportunity as amended by E.O. 11375, "Amending Executive Order 12246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and all implementing regulations and executive orders. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this contract on the basis of race, color, age, religion, sex, disability or national origin.

If a recipient of Federal Financial assistance, shall comply with Executive Order 13166, Federal Register Volume 65. No.50121, including but not limited to, language providing services to improve access to its programs and activities for persons, who, as a result of their national origin, are limited in their English proficiency ("LEP"). The language services shall:

- a) Be consistent with the general guidance document (LEP Guidance) issued by the Department of Justice which sets forth the compliance standards recipients of Federal financial assistance must follow to ensure that LEP persons have meaningful access to the program's services and activities;
- b) Have a method of identifying LEP individuals; and
- c) Provide language assistance measures (e.g. oral interpretation and written translation services; training of staff; providing notice to LEP persons; monitoring compliance and updating the plan.)

In the event of the Second Party's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Second Party may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Second Party shall include the provisions of paragraphs (1) through (7) of Section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each sub-contractor or vendor. The Second Party shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event a Second Party becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Second Party may request the United States to enter into such litigation to protect

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the interests of the United States.

4.43—Minority Recruitment, Hiring and Reporting Requirements

The Second Party shall maintain and provide documentation, as needed, of its minority recruiting and hiring policies and procedures, and make available, upon request, a report of these activities.

4.44—Violation of Tax and Employment Laws (See Exhibit A)

KRS 45A.485 requires the Second Party to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Second Party within the previous five (5) year period of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342. These statutes relate to the state sales and use tax, corporate and utility tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers' compensation insurance laws.

To comply with the provisions of KRS 45A.485, the Second Party shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination. KRS 45A.485 also provides that, for the duration of any contract, the Second Party shall be in continuous compliance with the provisions of those statutes which apply to the Second Party's operations, and that the Second Party's failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the Second Party's disqualification from eligibility for future state contracts for a period of two (2) years.

The Second Party shall not have violated any of the provisions of the above-referenced statutes within the previous five (5) year period.

4.45—Certification Regarding Drug Free Workplace

The Second Party hereby certifies that it will, or will continue to, provide a drug free workplace in accordance with 45 CFR part 82. The Second Party shall at a minimum:

- a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited from the Second Party's workplace and specifying actions that will be taken against employees for violation of such prohibition;
- b) Establish an ongoing drug free awareness program to inform employees about:
- c) The dangers of drug abuse in the workplace;
- d) The Second Party's policy of maintaining a drug free workplace;
- e) Available drug counseling, rehabilitation and employee assistance programs; and
- f) The penalties that may be imposed upon employees for drug abuse violation.

4.46—Confidential Information

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

- a) Information which the Commonwealth has released in writing from being maintained in confidence;
- b) Information which at the time of disclosure is in the public domain by having been printed and published

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- and available to the public in libraries or other public places where such data is usually collected; or
- c) Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

4.47—Confidentiality, Confidentiality Agreements and Limitations on Information and Data Use

The Second Party agrees that it and any employee or agent acting on its behalf in providing services under this Contract will abide by the state and federal rules and regulations governing access to and use of information and data provided by CHFS or collected by the Second Party and will use such information or data only for those purposes expressly delineated, defined and authorized in this Contract. In the performance of services under this Contract, the Second Party agrees as follows:

The Second Party shall cause all personnel who may have access to confidential information provided by CHFS to enter into CHFS approved confidentiality agreements and shall maintain such confidentiality agreements on file. CHFS reserves the right to direct the removal from contract administration, or the termination of access to CHFS provided information, for any individual covered by this Contract who has not signed a confidentiality agreement.

Any subcontractor, their agent, and any of their employees who enter into any type of agreement to fulfill the requirements of this contractual agreement with the Second Party, must provide written assurances that they and any of their agents will abide by the terms of confidentiality as set forth in this Contract, as well as any federal or state confidentiality agreements which may govern the terms and conditions in this Contract.

Any dissemination of information about projects funded and the scope of work described in the terms and conditions of this Contract, must be fully documented and reviewed by the Cabinet's project manager before any representation, electronic or otherwise, of projects, their funding sources, use of data, or data analyses may be posted to a web page or otherwise published.

The Second Party shall permit unrestricted access on demand to personnel of the Cabinet, the Office of the Attorney General, the Office of the Auditor of Public Accounts, and any representative of a government funding agency authorized to review records for audit or investigation purposes to its current policies and procedures for ensuring compliance with these confidentiality requirements, the confidentiality agreements with its personnel, and subcontractor confidentiality assurances.

4.48—HIPAA Confidentiality Compliance

The Second Party agrees to abide by the "HIPAA Privacy Rule," 45 CFR Parts 160 and 164, established under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 USC 1320d) to protect the security, confidentiality, and integrity of health information. The Cabinet, a Covered Entity, and the Second Party, a Business Associate under the HIPAA Privacy Rule. This would include any form of information including paper records, oral communications, audio recordings, electronic displays, etc. In the performance of services under this Agreement, the Second Party agrees to use and disclose Protected Health Information only in accordance with the HIPAA Privacy Rule as follows:

- a) To use or disclose Protected Health Information solely for meeting its obligations under this Agreement or as required by applicable law, rule or regulation, or by accrediting or credentialing organizations to whom the Cabinet or Second Party is required to disclose such information or as otherwise is permitted under this contract, or the HIPAA Privacy Rule;

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- b) To implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this contract;
- c) To take reasonable steps to ensure that its employees' actions or omissions do not cause a breach in the terms of the HIPAA Privacy Rule;
- d) To make available Protected Health Information to the extent and in the manner required by Section 164.524, for purposes of accounting of disclosures in accordance with Section 164.528, and for amendment and incorporation of any amendments in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule;
- e) To ensure that its agents, including subcontractors abide by the same restrictions and conditions concerning Protected Health Information contained in this contract, and that any subcontract entered into contain this requirement;
- f) To report to the Cabinet any use or disclosure of Protected Health Information of which it becomes aware that is not in compliance with the terms of this contract; and
- g) To return or destroy copies of all Protected Health Information upon request of the Cabinet or upon termination of this contract. If such return or destruction is not feasible, the Second Party shall extend the protections of this contract to such information and limit further uses and disclosures to those purposes that make its return or destruction not feasible.

Government agencies responsible for HIPAA Privacy Rule compliance and appropriately authorized shall have the right to audit the Second Party's records and practices related to use and disclosure of Protected Health Information to ensure the Cabinet's compliance with the terms of the HIPAA Privacy Rule. In the event that either party to this contract believes that any provision fails to comply with the then current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this contract, if necessary, to bring it into compliance. If, after such thirty-day period, the contract fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

4.49—Governing Law and Regulations

All questions as to the execution, validity, interpretation and performance of this Contract shall be governed by the laws of the Commonwealth. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this Contract shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

Exhibit A

Rev 26 Mar 03

KRS 45A.485 CERTIFICATION FORM

Commonwealth of Kentucky

Finance and Administration Cabinet

Sworn Statement Regarding Violations of

Kentucky Revised Statutes

Pursuant to KRS Chapter 45A.485

KRS 45A.485 states:

Any state contract awarded under KRS Chapter 45A, 175, 176, 177, or 180 after July 15, 1994, shall require the contractor to:

Reveal any final determination of a violation by the contractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor; and

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Be in a continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor for the duration of the contract.

A contractor's failure to reveal a final determination of a violation of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the Commonwealth's:

Cancellation of the contract; and

Disqualification of the contractor from eligibility for future state contracts for a period of two (2) years.

The undersigned hereby swears or affirms, under penalty prescribed by law or perjury, that neither he/she, individually, nor, to the best of his/her knowledge and belief, the corporation partnership, or other business entity which he/she represents in connection with this procurement, has knowingly violated any provisions of the 45A.863, and that the award of a contract to him/her, individually, or to the corporation, partnership or other business entity which he/she represents, will not violate any of the above-referenced statutes.

Signature

Printed Name

Title

Date

Company Name

Address

State of _____ County of _____

Subscribed and sworn to before me by _____, _____ of
(Affiant) (Title)

_____ this ____ day of _____, 20____.

(Company Name)

Notary Public

My commission expires: _____ (seal of notary)

Exhibit B

Solicitation #: _____

REQUIRED AFFIDAVIT FOR BIDDERS OR OFFERORS

A. In accordance with the provisions of KRS 45A.110 and KRS 45A.115, each bidder or offeror shall swear or affirm under penalty of perjury that:

Neither the bidder or offeror as defined in KRS 45A.070(6), nor the entity which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky, and

The award of a contract to the bidder or offeror or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

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B. I also hereby swear and affirm under penalty of perjury that the entity bidding is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state; is duly registered with the Kentucky Secretary of State to the extent required by Kentucky law; and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

C. I hereby swear and affirm under penalty of perjury that the entity bidding is not delinquent on any state taxes or fees owed to the Commonwealth of Kentucky and will remain in good standing for the duration of any contract awarded.

I have fully informed myself regarding the accuracy of the statements made above.

SIGNATURE

Printed Name

Title

Date

Company Name _____

Address _____

Subscribed and sworn to before me by _____, _____
(Affiant) (Title)

of _____ this ____ day of _____, 20____.
(Company Name)

Notary Public

[seal of notary]

My commission expires: _____